

Quoted Equity shares which are in lock-in period are not "quoted shares" but "unquoted shares", for the purposes of valuation under the WT Act

Facts of the case: Deputy Commissioner of Gift-tax, Central Circle-II v. BPL Ltd.

An interesting question arose in this case where the Respondent in this case gifted shares of two listed companies to another company and as these shares were part of promoters holding and they were locked in, the shares were not valued as per the quotation of these shares on stock exchange on the plea that these shares could not be transferred in the open market.

Decision of the Case:

- As per the definitions, the expression "quoted share" in case of an equity share means a share which is quoted on any recognised stock exchange with regularity from time to time and where the quotation of such shares is based on current transactions made in the ordinary course of business. The expression "unquoted share", in relation to an equity share, means a share which is not a quoted share.
- When the equity shares are in a lock-in period, then as per the guidelines issued by the Securities and Exchange Board of India (SEBI), there is a complete bar on transfer, which is enforced by inscribing the words "not transferable" in the relevant share certificates. This position is accepted by the Revenue, which, however, has relied upon a general circular issued by SEBI, wherein it is stated that the shares under the lock-in period can be transferred *inter se* the promoters. This restricted transfer would not make the equity shares in the lock-in period into "quoted shares" as defined *vide* sub-rule (9) to Rule 2 of Part A of Schedule III of the W.T. Act, as the lock-in shares are not quoted in any recognised stock exchange with regularity from time to time, and it is not possible to have quotations based upon current transactions made in the ordinary course of business.
- Possibility of transfer to promoters by private transfer/sale does not satisfy the conditions to be satisfied to regard the shares as quoted shares.
- Equity shares which are quoted and transferable in the stock exchange are to be valued on the basis of the current transactions and quotations in the open market. The market quotations would reflect the market value of the equity shares that are transferable in a stock exchange, but this market price would not reflect the true and correct market price of shares suffering restrictions and bar on their transferability. The shares in question would become transferable post the lock-in period. It is a fact that the market price fluctuates, and the share prices can move up and down. Share prices do not remain static. Equally, the restriction or bar on transferability has an effect on the value/price of the shares. Easy and unrestricted marketability are important considerations that would normally impact valuation/price of a share. Therefore, one may have to depreciate the value of the lock-in equity shares, viz. shares that are free from such restriction.

- In terms of the Rules, we cannot apply a hybrid method of valuation while applying Rule 9 of Part C of Schedule III of the W.T. Act, which prescribes the method of valuation for quoted shares. *Ad hoc* depreciation/reduction from the quoted price of equity shares transferable in the open market is not permitted and allowed *vide* Rule 9 of Part C of Schedule III of the W.T. Act.
- The shares in question being "unquoted shares", therefore, have to be valued in terms of Rule 11 as a standalone valuation method. This would be in accord with sub-section (1) to Section 6 of the G.T. Act, which states that the value of a property, other than cash, transferred by way of gift, shall be valued on the date on which the gift was made and shall be determined in the manner as laid down in Schedule II of the G.T. Act, which, as noticed above, makes the provisions of Schedule III of the W.T. Act applicable.